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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.

vs.

LAURA PATTERSON ET AL,

In Error to the Court of Appeals of Maryland.

Brief for Defendants in Error.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and others.
FRANK P. CLARK,
For Mary Coles Carter and Others.

ESTHER S. BUCHANAN
ET AL.

vs.

LAURA PATTERSON
ET AL.

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No. 266.

In Error to the Court of Appeals of Maryland.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

In the latter part of the Eighteenth Century Samuel Smith and James A. Buchanan, of Baltimore, carried on an extensive business as co-partners under the firm name of S. Smith & Buchanan. In 1798 these partners, in common with many other citizens of the United States, sustained heavy losses from the illegal depredations by the French upon American commerce. The particular losses sustained by this firm arose from the seizure and condemnation as prize of the ships Patapsco and Jane and their cargoes. This firm of S. Smith & Buchanan owned a portion of the cargo of both vessels and a one-half interest in the Jane.

These sufferers and others in similar situation and their descendants claimed that by the effect of a subsequent treaty between the United States and France, whereby the United States for a consideration gave up their right to exact from France compensation to their citizens for these losses, the United States government assumed the obligation of responding for them. No action of Congress, however, was taken until, in the year 1885, an Act was passed authorizing the Court of Claims to inquire concerning the claims of such citizens of the United States as had valid claims for indemnity upon the French government arising out of illegal captures, &c., prior to the ratification of the convention between the United States and the French Republic, concluded September 30, 1800, and mutually ratified June 31, 1801. The Court of Claims was to examine into "the validity and amount of all claims included within the description above mentioned, together with their present ownership," and to report its conclusions of law and fact to Congress. The Act provided, however, that "such findings and report of the Court shall be merely advisory as to the law and facts found and shall not conclude either the claimant or Congress." This Act (23 Stat. at Large, page 283) is set forth in the Record, pages 46, 47.

In 1891 an Act was passed for the payment of those claims which down to that time had been reported upon favorably by the Court of Claims. (26 Stat. at Large, ch. 540, pages 862, 897, 908.) And an Act approved March 3, 1899 (30 Stat. at Large, page 1161, *et seq.*), provided for the payment of other claims which in the meantime had received the approval of the Court of Claims. It is this latter Act which made the appropriations for the claim of S. Smith & Buchanan, and furnished the fund which the Court below, a Court of Equity, was asked to distribute in this case. (Extracts from the Act appear in Record, pages 94–96.) These extracts were selected by counsel for plaintiffs in error without consultation with counsel for the defendants in error, and are printed without any indication that some portions of the

Act are omitted. Reference is, therefore, made to the Act as printed in the Statutes at Large.

The construction of the Act of 1891, which first made an appropriation for claims of this class, was fixed by this Court in Blagge vs. Balch, 162 U. S. 439, where the following propositions were laid down.

1. That under the Act of 1891 the payment was directed by Congress as a gift or gratuity to the next of kin of the original sufferers living at the date of the appropriation, and not in the discharge of any obligation of the United States to the estates of the original sufferers.

2. That the fund should therefore not be distributed to creditors nor to legatees or other assignees, but in all cases *to the next of kin of the original sufferers.*

3. That "Congress in order to reach the next of kin of the original sufferers, capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended the next of kin according to the Statutes of Distribution of the States of domicil of the original sufferers." 162 U. S. 464.

The general enactments of the Act of Congress of 1891, ch. 540, 1 Sup. to Rev. Stats. of United States, page 925, which were construed by this Court in Blagge vs. Balch, *supra*, are repeated word for word in the Act of 1899, ch. 30, 30 United States Stat. at Large, 1161, *et seq.*, which also contains a further express declaration—not found in the Act of 1899—which is in these words: "Provided, however, that any French spoliation claim appropriated for in this Act, shall not be paid if held by assignment or owned by any insurance company." (Record, page 96, 30 U. S. Stat. at Large, page 1205.)

Therefore, the construction given by this Court to the Act of 1891, in *Blagge* vs. *Balch*, *supra*, is not merely acquiesced in, but is confirmed and emphasized by this positive prohibition of any payment under the Act to any one claiming under any kind of assignment.

As already stated, the losses in this case were sustained in the year 1798 by the firm of S. Smith & Buchanan, so that those who *at that time* were partners in the firm were of course the original sufferers; and the evidence shows, and the Maryland Courts so found, that this firm then consisted of Samuel Smith and James A. Buchanan. Upon them the loss originally fell. Any person who afterwards became a partner in the house could only derive an interest in the claim by assignment, if at all; he was not and could not be an original sufferer. The next of kin, therefore, of Samuel Smith and James A. Buchanan who were living on March 3, 1899, are equitably entitled to the fund now in the hands of the plaintiff in error, Miss Buchanan, according to the rule laid down by this Court.

But it appears that William B. Buchanan, a son of the James A. Buchanan who, as just stated, was one of the original sufferers, was admitted into the firm of S. Smith & Buchanan in 1818, about 20 years after the losses occurred. He outlived his father and Samuel Smith; and, through a mistake, Miss Esther S. Buchanan, nominally as his administratrix, was allowed to prosecute the claim of S. Smith & Buchanan before the Court of Claims under the Act of 1885, and to collect the money under the Act of 1899. It is contended on behalf of the plaintiffs in error, Miss Esther S. Buchanan and a brother of hers, who are the two children of William B. Buchanan, that by reason of this mistake the distribution should be made on the theory that William B. Buchanan, who was an infant only three years old when the French captures were made, and who was not admitted into the firm until nearly twenty years later, must nevertheless be treated as if he had been an original sufferer and had owned a full third interest in the firm at the time of the losses. The plaintiffs in error, it will be noticed, also claim to stand among the next of kin of James A. Buchanan, one of the two original sufferers, being grandchildren of his; and the decree, which is now the subject of review, awards to them their full shares as such. Not content, however, with

this, their contention is that one-third of the entire fund should be allotted exclusively to them as next of kin of their father, William B. Buchanan—a contention as injurious and inequitable in regard to the other next of kin of the said James A. Buchanan, as it is in regard to the next of kin of Samuel Smith, the other original sufferer. We submit that this contention is as unfounded in law as it is plainly opposed to equity and good morals.

The suit in which this writ of error is taken was begun by a bill in equity filed in the Circuit Court Number Two of Baltimore City—a Court of exclusively equitable jurisdiction—by Esther S. Buchanan individually, Esther S. Buchanan administratrix of William B. Buchanan, and Esther S. Buchanan, administratrix of James A. Buchanan, against the other next of kin of James A. Buchanan, (including of course Wilson C. Buchanan, who together with the plaintiff constituted the next of kin of William B. Buchanan) and against the next of kin of Samuel Smith. The bill set forth the fact of the losses in question and the legislation above referred to respecting French Spoliation Claims. It did not disclose the date on which William B. Buchanan was admitted into the firm. The prayer for relief was:

> "1. That this Honorable Court will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth, and that it will direct and supervise the distribution of the same among the parties whom the Court may find to be entitled to participate therein, according to the proportion and rule which this Court may declare to govern the same."
>
> "2. And for such other further relief, etc." (Record, page 16.)

A decree *pro confesso* was entered against Wilson C. Buchanan and certain other defendants for failure to appear. (Record, page 24.) The remaining defendants answered the bill of complaint, and by their amended answers alleged

that William B. Buchanan was not an original sufferer, and claimed that, therefore, his next of kin were not, as such, entitled to participate in the fund. (Record, pages 28, 31.) Testimony in support of the allegation, of the amended answers was then taken.

The Circuit Court No. 2 decided, however, at this hearing, that because of the error by which Esther S. Buchanan prosecuted the claim nominally as administratrix of William B. Buchanan, the latter must be treated as if he had been an original sufferer and had had an equal interest in the firm with Samuel Smith and James A. Buchanan. (Record, page 91.) This decree was reversed by the Court of Appeals of Maryland on appeals taken by certain of the present defendants in error; and the cause was remanded to the Circuit Court No. 2 for further proceedings in conformity with the opinion of said appellate Court. The opinion of the Court of Appeals will be found in the Record, pages 97-103, and is reported in 92 Md. 334.

A decree in conformity with this opinion was then passed by the Circuit Court No. 2, distributing the fund to the next of kin of those persons who were in fact the original sufferers, namely, Samuel Smith and James A. Buchanan, that is to say, one-half to the next of kin of said Samuel Smith, and the other half to the next of kin of said James A. Buchanan. (Record, pages 108-109). From this decree the plaintiffs in error appealed to the Court of Appeals, which adhered to its former opinion, and affirmed the decree appealed from. (Record, pages 113-117). From this second decision of the Court of Appeals, the present writ of error is sued out by the said Esther S. Buchanan and Wilson C. Buchanan, her brother.

Points.

I.

The fact is undeniable that the claim which Congress intended to recognize was that based on the *losses* sustained

by the owners of the vessel and goods captured and condemned in 1798. This is shown by the Act of 1899 itself, which classes together all claims, by whomsoever owned, arising out of the capture of the same vessel. Thus, on the ship Jane, claims represented respectively by Esther S. Buchanan, administratrix, by Cumberland D. Hollins, administrator, and by William Donnell, administrator *d. b. n., c. t. a.*, were consecutively appropriated for, although in other parts of the same Act appropriations were made to the same persons in respect of losses sustained by the capture of other vessels. In other words, the claims are identified rather by the vessels from whose capture they arose than by the ownership of the claims themselves. The money which is now in Court represents one undivided half of the ship Jane and a portion of her cargo, and a portion of the cargo of the ship Patapsco. These belonged to Samuel Smith and James A. Buchanan, co-partners trading as S. Smith & Buchanan; who necessarily were alone the original sufferers.

It is equally certain that Congress meant that in all cases provided for in the appropriations for French Spoliation claims the money should finally go to the next of kin of the original sufferers, efflux of time having removed all the original claimants themselves. It was obviously necessary for convenience that some individual should in each case act as the representative of these next of kin, and be the hand to receive the money. What official character he might sustain outside was of little importance if in point of fact he represented the next of kin, and so as agent or trustee would faithfully distribute the money among them.

And, in order to guard against the abuse of the position or improper diversion of the gifts from the intended beneficiaries, Congress provided that the money awarded to any claimant upon the claim he represented should not be paid to him until he had furnished evidence satisfactory to the Court of Claims that he in fact represented the next of kin of the original sufferers, which precaution shows plainly what direction the money was designed to take. If, by

mistake or fraud, a misrepresentation is made in any case, the only effect is a failure in the practical application of the precautionary measure; the trust is not affected by the error; the recipient of the fund takes it clothed with the trust, just as an executor *de son tort* or guardian *de son tort*, or other person improperly coming into possession of trust property, is compelled in equity to execute the trust. To deprive the real next of kin of the original sufferers of the bounty of Congress because the fiduciary had by mistake, fraud or misrepresentation obtained from the Court of Claims a certificate that he represented them, the decision of the Court of Claims being wholly *ex parte* and without notice to the beneficiaries, would convert a provision designed by Congress for the protection of the next of kin into the instrument of their undoing.

The main object in the conduct of the proceeding next to the establishment of the claim itself, including the fact of loss, is to be reasonably sure that the formal claimant, whatever official character he may possess as administrator of this or that decedent, really represents the intended next of kin—has *their authority* to prosecute the claim.

If there be no want of this essential ingredient but only an *irregularity* as to the official character of the claimant, the Court of Claims has repeatedly shown their indisposition to attach importance to it. The existence of a good understanding between the *cestuis que trustent* and the claimant makes it unimportant how he is described or what office he may hold. Thus, although the claimant appears as executor, or administrator *cum testamento annexo*, of the original sufferer—which office would, apparently, require him to apply the money in accordance with the will of his testator and pay it to legatees—the money nevertheless is given to him in confidence that he will distribute it as the Act of Congress intends, to the next of kin.

Blagge vs. Balch, 162 U. S. 461.

Indeed, the statement of the claimant's official character must in the Act of appropriation be treated rather as a *designatio personae* than as an indication of the character in which he is to receive this money. For, however he be described, or whatever office he hold, he takes as the trustee of Congress, upon trust to carry out its intention. This is clearly shown by the case of an administrator with will annexed, to which reference has already been made, and which was before this Court in Blagge vs. Balch, *supra*.

In a case in the Court of Claims where an Assignee in Bankruptcy had filed the claim, and the Act of 1891 had made it evident that he could not recover, the administrator, who was then unable to file a claim *de novo*—being barred by the expiration of the statutory period of limitations—was permitted by the Court of Claims, (the original petitioner, the Assignee, consenting) to be substituted as claimant in place of the latter. There, the position of the Assignee was directly adverse to any assertion of right on the part of the next of kin; and yet, the claim itself being the same, and having been duly established by proof of loss, and the failure of the administrator originally to intervene being an innocent one, founded on an expectation of recognition by Congress of a legal validity of assignments of the claim, the amendment was allowed.

Ship Concord, 27 Court of Claims, 142.

In another case, the circumstances of which were so like those of the present one, as to make the two cases undistinguishable, a mercantile firm of David Stewart & Sons, consisting of David Stewart, David C. Stewart and John Stewart, owned a vessel named the Clio, which was captured and condemned by the French in 1796. William P. Stewart, a son of the senior partner, was admitted into the firm in the year 1802, and became the last surviving member of the firm as so changed. *His* administrator filed the claim on behalf of the firm of David Stewart & Sons. Before the award was made, the fact that William P.

Stewart was not a partner in 1796 having been ascertained, and coming to the knowledge of the counsel representing the government, the irregularity was brought under the consideration of the Court, who held that, as it appeared that the administrator of William P. Stewart in fact represented the next of kin of David Stewart, David C. Stewart and John Stewart, the original claimants or sufferers, and that he prosecuted the claim with their knowledge and at their request, the technical error of making him claimant as administrator of William P. Stewart, the son subsequently admitted into the firm, did not preclude the Court from rendering a decision upon the merits and reporting the case to Congress.

Brig Clio, John Stewart, Admr., vs. The United States, 27 Court of Claims Rep. 221.

An appropriation was accordingly made to "John Stewart, administrator of William P. Stewart" by an Act of 1902, Sess. I, ch. 887, in precisely the same terms as the Act of 1899, now under consideration. When that fund came to be distributed, could it have been for a moment contended that William P. Stewart was to be treated as if he had been a member of the firm when the losses occurred? The plaintiffs in error, not denying the force of this reasoning, attempted in the Court below to distinguish the Stewart case on the ground that William P. Stewart, whose administrator prosecuted the claim, had died without issue so that his next of kin would be the same as those of his father and elder brothers. But they would be *collateral* relatives of William and lineal descendants of his father, and in Maryland (where the Stewarts resided) lineal descendants take strictly *per stirpes* indefinitely, while in the case of collaterals more remote than nephews and nieces the distribution is *per capita* among those in equal degree and *no representation is allowed.* McComas vs. Amos, 29 Md. 120. Hence, if one-fourth of that fund were to be diverted to the next of kin of William P. Stewart consequences almost as serious

would follow as would result from sustaining the contention of the plaintiffs in error in the case at bar.

The evidence in the present case to show that Miss Esther S. Buchanan prosecuted the claim with the full consent and authority of all the next of kin, both of Samuel Smith and James A. Buchanan, is quite as satisfactory as the evidence in the Stewart case as to the authority of William P. Stewart from all the Stewart next of kin. To review the evidence establishing this fact is unnecessary, since the Court of Appeals has so found; and this conclusion, being a finding of fact by the State Court of last resort, is of course beyond dispute on this writ of error.

Egan vs. Hart, 165 U. S. 188.
Bement vs. Nat. Harrow Co., 186 U. S. 83.

The Court of Appeals of Maryland, speaking by Fowler, J., said in its opinion in the present case:

> "The mere fact that the claim was filed by the plaintiff in her name and as administratrix, etc., is immaterial. *The whole record shows beyond question that she represented with their consent all the parties who are now claiming against her.*" (Record, page 99.)

II.

1. The contention of the plaintiffs in error that the decision of the Court of Claims estops us from denying that William B. Buchanan was a member of the firm at the time of the losses, is not merely inconsistent with the principles and authorities above adverted to, but also, we submit, rests upon an entire misconception of the nature of that tribunal's jurisdiction in French Spoliation Cases and of the proceedings which took place in this cause.

It will be remembered that the Act of 1885, which is the foundation of the jurisdiction of the Court of Claims in these cases, expressly provides that "the findings and report of the Court shall be taken to be merely advisory as

to the law and facts found, and shall not conclude either the claimant or Congress." The quality of finality, the very basis of the doctrines of *res judicata* and estoppel by judgment, was therefore wholly lacking. As the Court of Claims itself has said: "There is no judgment, and *no element of a judgment.*" The Industry, 26 Ct. of Cl. 290.

See also—Buchanan, Admr., vs. U. S., 24 Court of Claims, page 81.
Brig Hiram, 24 Court of Claims, page 31.
Ship Concord, 27 Court of Claims, page 142.
Ship Theresa, 28 Court of Claims, page 326.
Ship Eliza, 28 Court of Claims, page 482.
Ship George, 25 Court of Claims, page 110.

In the nature things, no subsequent Act of Congress could give to that proceeding *judicial* qualities which it did not have at that time. Under a constitutional government, legislative power cannot reach to such an extent. Congress, however, attempted no such thing. An Act was passed appropriating money to pay certain findings of the Court of Claims subject to certain conditions; and that is all.

2. The objection of *estoppel* set up against the equitable right of the next of kin of Samuel Smith and James A. Buchanan to the indemnification money awarded on account of the spoliation of their property is wholly out of place on another ground. Estoppel by judgment or verdict presupposes a former suit to which the present contestants were parties on opposite sides, an issue distinctly made upon some matter of fact between them, a trial involving such issue by a tribunal competent to pass conclusively upon it, and a decision rendered thereon.

Who, then, were parties to the former cases in the Court of Claims?

The proceedings in respect to S. Smith & Buchanan's interest in the ship Jane and her cargo were begun by a petition filed by Miss Esther S. Buchanan against the United

States. (Record, pages 48, 49). She and the United States were the only parties to the suit. To be sure, the case was argued in conjunction with other cases relating to the same vessel and her cargo, in one of which Robert Carter Smith, administrator of Samuel Smith, who had owned individually a portion of the cargo, was the claimant. This joint hearing was, however, merely for convenience' sake, since necessarily the liability of the government for all claims arising out of the capture of one vessel would turn upon the same questions. The causes were not consolidated, nor was Samuel Smith's administrator made a party to Miss Buchanan's suit. The petition of Esther S. Buchanan stated that the loss was suffered by the firm of S. Smith & Buchanan in 1798, and that William B. Buchanan was "survivor of the firm of S. Smith & Buchanan."

In the case of the cargo of the Patapsco, a joint petition was filed against the United States by Esther S. Buchanan, William Donnell, Jane G. Howard, Susan Hoffman and Cumberland D. Hollins. (Record, pages 55-57.) It alleged that the petitioner Esther S. Buchanan had been appointed administratrix of William B. Buchanan, that "said William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan, all citizens of the United States," and that the loss was sustained in 1798 by the firm of S. Smith & Buchanan. This case was also for like reasons of convenience argued with the other cases arising out of the capture of this vessel. In one of these latter cases the administrator of James A. Buchanan, who owned individually a share in the vessel, was claimant. All of the claimants in these several cases were represented by the same counsel.

Neither petition of Miss Buchanan disclosed the date of William B. Buchanan's admission into the firm, or the names of the several partners who in 1798 composed it, and neither averred in terms that William B. Buchanan was a partner at that time.

Thus it clearly appears that neither the administrator of Samuel Smith nor of James A. Buchanan was party to either of the cases in the Court of Claims. That Court could not, if it had so desired, have made an award in favor of the administrator of James A. Buchanan, upon the claims upon which the awards were made in favor of Esther S. Buchanan. According to the provisions of the Act of Congress and the practice under it, each claim or petition stood to itself. As respects the claims represented by Miss Esther S. Buchanan, only an amendment which included the substitution of James A. Buchanan's administrator in her place, with the striking out of her name, could have opened a way for an award in his favor. Hence, as the cases stood, the Court not only did not, but could not, pass upon the question whether Miss Esther S. Buchanan or the administrator of James A. Buchanan was the better entitled in point of actual authority or of official position to prosecute those claims.

As already stated, none of the defendants in error were parties to the cases in the Court of Claims. Miss Esther S. Buchanan, it is true, was their *representative*, and prosecuted the partnership claims with their consent. This was in accordance with the requirement of the Act of Congress in this respect, a requirement of a representation not proved by any mere official appointment as administrator. (See Blagge vs. Balch, 162 U. S., 461.) In regard to this *substantially* representative character, the administrator of James A. Buchanan, did not represent the next of kin of Smith & Buchanan. As to the claim for the loss of James A. Buchanan's individual property, which consisted of a share in the ship Patapsco, he did represent James A. Buchanan's next of kin, but he did not represent even them as to any interest which their ancestor had possessed in the partership property.

Miss Esther S. Buchanan being the representative of all the next of kin, including the appellants, so that the entire proceeding was conducted by her for the common benefit of all concerned in the recovery of the claim, there was no

room for an issue between any of the next kin, either of Samuel Smith or of James A. Buchanan, and herself, as to any fact affecting the distribution of the money after its recovery.

3. Now, it is elementary law that no estoppel can exist in any case unless it clearly appears that the matter was actually in issue and decided. As said by Mr. Smith: "It need hardly be remarked that the effect of verdicts, whether upon parties or privies, altogether depends upon the question *whether the same point was in issue.* A verdict between two parties upon one question can, of course, have no binding effect in an issue joined between them or another. Nor will the verdict be admissible, unless it appears clear that the same point actually *was* in issue. It is not sufficient that it might have been so."

2 Smith Lead. Cas, 500, marg. Note to Doe vs. Oliver.

And see—Russell vs. Place, 106 U. S, 606, 608.

That no question whether William B. Buchanan was a member of the firm in 1798 or whether his administratrix or the administrator of James A. Buchanan was technically the proper party complainant was raised or suggested by the pleadings in the Court of Claims sufficiently appears from the analysis of Miss Buchanan's petitions which has already been given. It appears with even greater distinctness from the very findings of the Court in the case of the Jane.

Thus, the second finding (Record, page 81) states that the Jane was "owned by John Hollins, of Baltimore, one-half, and by Samuel Smith and James A. Buchanan, of Baltimore, one-half," and the fifth finding (Record, page 82) states that "the firm of S. Smith & Buchanan were the owners of one-half of the vessel," so that the two findings taken together show that William B. Buchanan could not at that time have been a member of the firm, which must have consisted of Samuel Smith & James A. Buchanan. Yet the eleventh find-

ing in the same case (Record, page 83) states that "William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan * * * and the same person who was an owner of the Jane and her cargo in 1798." Yet the Court had found that William B. Buchanan was *not* one of the owners of the Jane!

Such an inconsistency, patent on the face of the findings, shows conclusively that no question was made as to whether Miss Buchanan was technically the proper claimant or whether William B. Buchanan was a member of the firm in 1798. Obviously no necessity was felt to be exact in detail. And it is to be borne in mind that as William B. Buchanan was a son of James A. Buchanan, one of the original owners and sufferers, his children, including Miss Buchanan, were among James A. Buchanan's next of kin; also, that whether an administrator of William B. Buchanan or an administrator of James A. Buchanan appeared as claimant and received the money, it would not be distributed as assets of the estate of such decedent, but must go wholly to next of kin, and these were to include not only the next of kin of the Buchanan member of the firm, but next of kin of Samuel Smith also. The matter of substance was the establishment and collection of the claim. Whose should be the hand to receive it was of secondary importance.

From the whole it appears that no inquiry was judicially made into the question who constituted the firm of S. Smith and Buchanan in 1798, which firm, as was established by the evidence had a valid claim against the French Republic at the time of the making of the treaty in 1801. That Miss Esther S. Buchanan in fact represented the next kin of those who as members of the firm were the original sufferers and claimants against the French Republic was admitted. And the money was paid to her for distribution accordingly. It was supposed that William B. Buchanan was a member of that firm; yet according to the practice of the Court of Claims that error and the consequent informality were of no moment. If the mistake had been discovered,

and if counsel had thought it worth while to ask an amendment, the administrator or administratrix of James A. Buchanan might have been substituted for the administratrix of William B. Buchanan, or, as in the Stewart case (*supra*, pages 9, 10) the error might have been treated as wholly immaterial inasmuch as, whatever her official position, Miss Buchanan had in fact the authority of all the next of kin of the original sufferers to prosecute the claim on their behalf.

That Congress by the Act of 1899 made an appropriation on the recommendation of the Court of Claims, could not in any event give the findings of that body any greater scope than they were designed to have by that Court itself; and we already have seen that it never passed upon the question whether or not the administrator of James A. Buchanan had a better right than the administrator of William B. Buchanan to prosecute the claim as formal claimant.

Moreover, Congress did not make the appropriation unconditionally. On the contrary, it attached the important proviso that in all cases the payment should be made for the benefit of the next of kin of the original sufferers; and, as this Court in *Blagge* vs. *Balch* expressly declared, it committed to the State Courts the duty of determining who constitute those next of kin. The proviso of course overrides anything in the findings which might be thought to favor the pretensions of any persons other than the next of kin of original sufferers.

III.

The plaintiffs in error also rely upon the certificates given by the Court of Claims to the Secretary of the Treasury, under the provisions of the Act of 1899, that the personal representative on whose behalf the award was made represented the next of kin, and contend that such a certificate is a final adjudication that William B. Buchanan, of whose estate Esther S. Buchanan is administratrix, was a member of the firm of S. Smith & Buchanan in 1798.

These certificates have, if possible, even fewer of the attributes of a judgment than the original findings. The application therefor was wholly *ex parte*, without any notice to the defendants in error and without any opportunity on their part to be heard. As we have said above, the object of requiring the certificate was to safeguard the rights of the next of kin of the original sufferers. Payment was to be made in most cases to personal representatives—executors or administrators—persons whose official station might seem to require them to distribute the money to creditors and legatees; and the ordinary administration bond would probably not cover such a fund coming to the fiduciary's hands, not as part of his decedent's estate, but upon a special trust, so that the rights of the beneficiaries might be jeopardized if the administrator should turn out to be dishonest For the protection, therefore, of the next of kin, two precau ions were directed by Congress. Firstly, the courts of probate granting the administrations, respectively, were to certify that the personal representatives had given adequate security "for the legal disbursement of the awards;" and, secondly, to make assurance double sure, the Court of Claims was to certify that the administrator, whose official status was never sufficient proof, did in fact represent the next of kin of the original sufferers. If by any fraud or unintentional misrepresentation, this certificate is procured from the Court of Claims by one whose official position was irregular or—what would be far more serious—by one who in fact did not really represent the intended beneficiaries, or if the similar certificate of the probate court was obtained by similar means, the only result would be, as stated in the earlier part of this brief, a failure of these precautionary measures. The ultimate disposition of the fund—the trust created by Congress—would not be affected. The only risk of the beneficiaries would be from having as trustee a person who did not actually represent them or who was not adequately bonded; and all this risk would be at an end when the fund is brought by the trustee herself into a court of equity for distribution.

Obviously, therefore, the certificate of the Court of Claims being intended for the benefit of the next of kin cannot effect them prejudicially.

This conclusion, clear on principle, is also supported by the authority of this Court in *United States vs. Gilliat*, 164 U. S. 42. In that case, it appeared that the administrator of John Gilliat, one of the three members of the firm of Gilliat & Taylor, which had suffered from French Spoliations, filed his claim under the Act of 1885, chapter 25, and that an appropriation was made in his favor by the Act of 1891, chapter 540. He, however, was unable to comply with the conditions precedent contained in that Act; and in 1894 a special Act was passed directing that the sum appropriated as above stated, should "be paid to the person or persons entitled to recover and receive the same, to be ascertained by the Court of Claims upon sufficient evidence and certified to the Secretary of the Treasury." The Court of Claims decided and certified that the administrator of Thomas Gilliat, another one of the three members of said firm of Gilliat & Taylor, the original sufferers, was entitled to receive one-third of the appropriation made for the payment of the whole partnership claim. The United States attempted to treat this certificate as a judgment, and appealed to the Supreme Court. This Court, however, dismissed the appeal, and held that the certificate under the special Act was no more a judgment than the original "findings" under the Act of 1885, chapter 25. Consequently, no appeal would lie. This decision, therefore, effectively disposes of the contention of the plaintiffs in error that the certificate of the Court of Claims to the Secretary of the Treasury is a judgment, conclusive by estoppel or otherwise.

The other side, disregarding both the actual decision and the reasoning of the Court, cite this Gilliat case, upon the ground that since no appeal would lie from the action of the Court of Claims in granting the certificate, therefore the certificate of the Court of Claims is a final judg-

ment, concluding not merely the parties to it but also the defendants in error who had no knowledge or notice of the proceeding. The *non sequitur* in this argument, is, we trust, apparent.

The plaintiffs in error, in support of their, as we think, unsound interpretation of the Gillait case, rely upon a passage from Mr. Justice Peckham's opinion, which they tear from its context. Said that learned judge: "Such certificate was to be final and conclusive." But final and conclusive upon whom, and for what purpose? A mere glance at the rest of the opinion shows. It was a final direction by the United States Government to its agent, the Secretary of the Treasury, that the money be paid. The whole controversy was between the United States and the claimant. No question of *private* right as to the proper distribution of the fund as between different private persons arose—a very important distinction as will shortly be shown. The whole *ratio decidendi* of the Court was that the certificate was not a judgment or judicial act, but a mere executive direction to the Treasury Department.

It should be observed, moreover, that the whole controversy in this Gilliat case was as to who should receive the money as trustee. Here no question of that kind arises. The defendants in error do not desire to oust Miss Buchanan from her office as trustee. They merely insist that she make a distribution to the proper *cestuis que trustent—to those intended by Congress.* In the Gilliat case there was no question as to the distribution of the fund; that was left to the State Courts. Moreover, the second award in the Gilliat case was made under a *special* Act, and it covered not the whole claim of the partnership, but only the third which would ultimately fall to the next of kin of the partner whose representative was the claimant in the Court of Claims.

It should not be inferrred, however, that the certificates of the Court of Claims in the present case, when properly construed, contain anything prejudicial to the defendants in error. The only jurisdiction of that Court was to certify

whether or not the personal representative to whom the appropriation was made did in fact represent and have the authority of the next of kin of the original sufferers. A certificate to the effect that the Esther S. Buchanan who was the administratrix of William B. Buchanan was authorized to collect the money by all the descendants both of Samuel Smith and James A. Buchanan would have been, as we have stated, perfectly in accord with the facts, and would be far from prejudicing our contentions.

An additional finding that Miss Buchanan represented the next of kin of William B. Buchanan, while superfluous, would also have been true, since all the next of kin of William B. Buchanan were among the next of kin of James A. Buchanan. As a matter of fact, in the case of the Jane, the Court of Claims certified that "said Esther S. Buchanan on whose behalf an appropriation or award was made by Act of March 3, 1899, * * * represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim." In so far as the Court certified that Miss Buchanan represented the next of kin of William B. Buchanan, to wit., herself and her brother, the finding was warranted by the facts; but the Court ought to have gone further and certified that she represented the other next of kin of James A. Buchanan and also those of Samuel Smith. Had the Government objected, doubtless a more formal certificate would have been required as a condition to the payment of the appropriation. In so far as the Court of Claims is to be taken to have found by this rather ambiguous certificate that William B. Buchanan was an original owner of the claim, they manifestly exceeded the jurisdiction conferred upon them by the Act of 1899. In the case of the Patapsco, the certificate was similar in substance, though even more abbreviated and informal; and the foregoing remarks apply to it as well as to the certificate in the case of the Jane.

IV.

Finally, the whole question as to the functions of the Court of Claims in these cases and the effect to be given to its determinations is concluded by the authority of this Court in certain cases relating to the Alabama Claims. The legislation of Congress had established the Court of Commissioners of Alabama Claims with functions very similar to those exercised by the Court of Claims in these cases. One Taylor, who had previously gone into insolvency in a State Court, filed a claim in this Court of Commissioners and obtained a judgment for the amount of his losses from Confederate cruisers. This judgment having been paid to Taylor by the United States, Taylor died, and his assignee in insolvency, who, as the Alabama Claims passed to creditors and other assignees, was entitled to have obtained the award of the Court of Commissioners, brought an action for money had and received against Taylor's administratrix. It was urged that the decision of the Court of Commissioners in favor of Taylor was conclusive against his assignee; but the Supreme Court held that the award of the Court of Commissioners was conclusive as to the amount to be paid upon each claim, but not as to the party entitled to receive it, and that consequently the plaintiff might recover.

Butler vs. Gorrely, 146 U. S. 303.

In a previous case involving the same question, the Supreme Court had said:

> "The object for which the Court of Commissioners of Alabama Claims was established was to pass upon the claims which were presented to it for adjudication, and determine the amount to be paid by the United States on each claim. Questions respecting the ownership of the respective claims did not concern the Court. Its function was performed when it rendered its judgment on the merits of the claims. Its judgments were final upon all parties, as respects the validity of the claim, and the amount to be paid in satisfaction of it;

but there is nothing in the Acts of Congress relating to this matter, or in the reason of things, to indicate that the judgment of the Court, as to who were the owners of the respective claims submitted, should be considered final and irrevocable."

Williams vs. Heard, 140 U. S. 529, 539.

In these Alabama Claims Cases, it will be noticed, two points were determined: first, that the claims were assignable and therefore passed to assignees in bankruptcy or insolvency, and, second, that although the Court of Commissioners had rendered a judgment in favor of the original sufferer, the assignee could nevertheless recover from him the amount realized, since the judgment was not conclusive as to the persons entitled to receive the claim. It is the latter proposition that we now rely upon. The former is plainly inapplicable, since these French Spoliation Claims, as decided in *Blagge* vs. *Balch*, do not pass to assignees, legatees, or creditors. In every case of appropriation for claims against the United States, the first question to be determined is whether or not Congress has directed that assignments by will, by operation of law, or by act of the parties, be recognized. In Williams vs. Heard, *supra*, it was determined that the Alabama Claims were assignable; in Blagge vs. Balch, in deciding that French Spoliation Claims are not so, the appropriation being a mere gift to the next of kin, Mr. Chief Justice Fuller, said: "Manifestly, the claims involved in these cases do not come within the rule laid down in Comegys vs. Vasse, and Williams vs. Heard." Obviously, the learned judge referred to the ruling in those cases that the claims passed to assignees, and did not mean to deny the applicability of the other proposition of Williams vs. Heard—namely, that the decisions of the Court of Commissioners were not conclusive as to the party entitled to receive the award; for no question to which that rule might relate was then before this Court. The plaintiffs in error, we submit, in contending the contrary, disregard the whole purport of the reasoning of the Court.

We submit that the Alabama Claims Cases are direct authority in our favor; for certainly the *judgments* of the Court of Commissioners possessed a higher degree of finality than can attach to the "findings" of the Court of Claims in reference to French Spoliations.

United States vs. *Jordan*, 113 U. S. 418, relied upon by the plaintiffs in error, does not conflict with these principles. In that case, a claim having been made by one E. L. Jordan for the recovery of certain taxes alleged to have been illegally exacted, an Act of Congress was passed directing the payment of $2,290 to Jordan on account of this claim. The officials of the Treasury Department refused to pay the full $2,290 on the ground that some of the taxes in question had been legally paid; and Jordan brought suit against the United States in the Court of Claims. That Court, and the Supreme Court on appeal, held that such a question could not be opened, and that the plaintiff was entitled to recover. The Statute was mandatory, and left nothing to the Treasury Department except the ministerial act of paying the money. It was a simple case of an appropriation of a definite sum to a named individual. Moreover, the whole controversy was between the United States and the claimant. There was no question as to the proper distribution of the fund when paid—as to whether the payee would hold beneficially, or upon trust, and if so upon what trust. This Jordan case was followed by *United States* vs. *Louisville*, 169 U. S. 249, a precisely similar case, and one to which the foregoing remarks are, therefore, equally applicable.

This Court has, indeed, repeatedly held that the class of cases relied upon by the plaintiffs in error, where the question of the conclusiveness of acts judicial or *quasi* judicial by which money has been paid or title to land granted by the United States has been raised between the United States and the party to whom the money was paid or the land granted, have no application to a case like the present where the question arises in a Court of equitable jurisdiction between private parties, after the title has

passed from the government. Cases of that kind are U. S. vs. Bem Price, 116 U. S. 45; U. S. vs. Jordan, 113 U. S. 418; U. S. vs. Louisville, 169 U. S. 249; U. S. vs. Gilliat, 164 U. S. 46, cited by the plaintiffs in error. The radical distinction between such cases and a case like the present, was declared and applied by this Court in *Johnson* vs. *Towsley*, 13 Wall. 72, where the luminous opinion of the Court delivered by Justice Miller defines the grounds of the jurisdiction of Equity so clearly as to leave no room for doubt. There, with reference to the facts of the particular case which involved the effect of a decision of the Commissioner of the Land Office as to a certain grant, the opinion after adverting to "the general doctrine that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others," proceeds to say:

> "That the action of the land office in issuing a patent for any of the public land, subject to sale by pre-emption or otherwise, is conclusive of the legal title, must be admitted under the principle above stated, and in all Courts and in all forms of judicial proceedings, where this title must control, either by reason of the limited powers of the Court, or the essential character of the proceeding, no inquiry can be permitted into the circumstances under which it was obtained. On the other hand there has always existed in the Courts of Equity the power in certain classes of cases to inquire into and correct mistakes, injustice and wrong in both judicial and executive action, however solemn the power which the result of that action may assume, when it invades private rights; and by virtue of this power the final judgments of Courts of Law have been annulled or modified, and patents and other important instruments issuing from the crown, or other executive branch of the government, have been corrected

or declared void, or other relief granted. No reason is perceived why the action of the land office should constitute an exception to this principle."

13 Wall. 83, 84.

And a little later on, in the same opinion, the method of the exercise of this jurisdiction of equity is thus explained:

"And so, if for any other reason recognized by Courts of Equity, as a ground of interference in such cases, the legal title has passed from the United States to one party, when, in equity and good conscience, and by the laws which Congress has made on the subject, it ought to go to another, 'a Court of Equity will,' in the language of this Court in the case of Stark vs. Stars, (8 Wall. 402) just cited, 'convert him into a trustee of the true owner, and compel him to convey the legal title.'"

13 Wall. 85.

And see—Carpentier vs. Montgomery, 13 Wall. 480, 497.
Marquez vs. Frisbie, 101 U. S. 475.
Monroe Cattle Co. vs. Becker, 147 U. S. 47.
Turner vs. Sawyer, 150 U. S. 578.

VI.

The plaintiffs in error concede that Miss Buchanan does not hold the money exclusively for the benefit of the next of kin of her own decedent, William B. Buchanan, and they concede that it is permissible to cut down indefinitely William B. Buchanan's interest in the firm. That is to say, it is conceded, that if evidence to that effect were forthcoming the defendants in error might show that William B. Buchanan instead of owning, as the plaintiffs in error claim, a one-third interest, owned only a one-tenth, a one-hundredth, or one-thousandth interest, so that his next of kin would be entitled only to a one-tenth, a one-hundredth, or one-thousandth part of the money appropriated by Congress. But it is argued that if we go further and show that he had no interest whatever in the firm which suffered the losses,

then, as by a species of magic, he is presumed to own a full third, and must receive a full third of the appropriation. That is to say, if he had owned a one-thousandth interest in the firm, his next of kin would receive only a one-thousandth part of the fund; but since he owned no interest in the firm, his descendants must receive a full third. Nothing could show more clearly the unreasonableness, not to say absurdity, of the position of the plaintiffs in error.

The plaintiffs in error reach this curious result by starting with the legal presumption that the shares of partners are equal, and then arguing that as it is obviously impossible to produce evidence as to the extent of the interest in the firm of one whom the evidence incontrovertibly shows not to have been a member at all, the legal presumption must stand that he was an equal partner! But we respectfully submit that such jugglery in order to defeat a manifest equity although perhaps suited to the Middle Ages is wholly out of place in this, the twentieth century.

VII.

It has already been stated that any real interest which William B. Buchanan could be supposed to have had in these claims must have been based on some assignment made by the original sufferers to him. Not being an original sufferer, he never could have had any other ground of title or interest; and hence his claim, and that of those claiming under him as his next of kin, is expressly barred by the provisions of the Act of 1899.

But the evidence is far from showing that *any* assignment was ever made, or that these claims were transferred by the old firm to the new when William B. Buchanan was admitted as a member. A "statement of the affairs of S. Smith & Buchanan," (Record, page 87,) does show that certain "Claims on the French, the Dutch and the Neapolitan Governments" and a "Claim on Lima for Ship Clothier" were treated in 1821 as belonging to the firm as then constituted; but there is nothing to connect the claims there mentioned

with those which are the subject of this litigation. Indeed, it is clear that they are totally distinct; for in 1821 these "French Spoliation Claims" were no longer "Claims on the French Government," but on the United States Government. The sufferers from the French Spoliations had consistently contended that by the Act of the United States in the treaty of 1801, the French Government had been released from all liability, and that the United States had become liable in its stead. The claim was not in legal contemplation a claim against France, nor is it likely that S. Smith & Buchanan would have been willing to designate it as such.

The plaintiffs in error, upon the assumption that William B. Buchanan did acquire by assignment an interest in these claims, contend that, nevertheless, he was not *such* an assignee as is excluded by the Act of 1899. They imagine that the exclusion of assignees applies only to *speculative* assignees. Now, if William B. Buchanan ever did become an assignee of any part of this claim, there is no evidence to show that he did not acquire such interest for speculation. But the whole contention is baseless, for not merely are all assignees, whether speculative or not, expressly excluded by the Act of 1899, but, furthermore, the appropriation has been authoritatively held to be a gift or gratuity to the next of kin of the original sufferers. Legatees and creditors are certainly not assignees for purposes of speculation, yet they are cut out.

The plaintiffs in error cite a case of Adams v. U. S., 26 Ct. of Cl. Rep. 249. There an insurance broker, according to the business customs of those early days, was accustomed to effect policies of marine insurance, acting as the agent of both insurer and insured. While he incurred no legal liability on the policies, he yet regarded himself as under a moral obligation to see that all losses covered by policies negotiated through his office were promptly settled, and accordingly he was accustomed to pay all such losses himself, looking to the underwriters for reimbursement. He had effected insurance on certain vessels which were cap-

tured by the French; and he, as was his custom, promptly paid the losses. Shortly afterwards he, for a consideration, agreed with the underwriters, who were technically the original sufferers, to assume all liability on insurance which he had placed with them, and took an assignment of their French claims. The Court of Claims, treating this insurance broker as morally an original sufferer, reported the claim favorably. The decision was rendered prior to Blagge v. Balch, with which case much of the reasoning is inconsistent. But whatever view be taken of the peculiar circumstances of the Adams case, they are obviously not at all like those of the case at bar. Here, the interest of William B. Buchanan, if he ever acquired any in the claim, arose from a transfer made twenty years after the origin of the claim, and cannot by any possible construction be regarded as contemporaneous with the loss.

The Ship Galen, 37 Ct. of Cl. Rep. 92, which is also cited by the other side does not bear out their contention. There, the original sufferer assigned his claims to his grandson in consideration of one dollar and of love and affection; and by his will appointed the same grandchild as his executor. The Court of Claims reported favorably upon a claim represented by such grandson as executor; but they did not decide that this assignment was effective, as the plaintiffs in error erroneously state. The Court simply reported the fact of the assignment to Congress, just as in S. Smith and Buchanan's case, they reported the assignment to Ellicott and Meredith, trustees for the benefit of creditors. Moreover, that claim has not yet been appropriated, for so that it is impossible to predict what disposition may be made of it by Congress.

VIII.

Moreover, the whole case of the plaintiffs in error depends upon the unwarranted assumption that the three members of the firm in which William B. Buchanan was a partner contributed equally to its capital. It is true that in the absence

of proof of an agreement to the contrary the law presumes that partners intend to share in profits equally, but no case has been cited to show that partners are presumed to have contributed equally to the capital of the firm. Not only so, but it affirmatively appears that these very goods and vessels (or the resulting claims for indemnity) if they ever passed to the new firm on its formation in 1818 passed as capital contributed by Samuel Smith and the elder Buchanan, by whom they had previously been owned.

Now, upon the dissolution of a firm its capital is returned to those partners by whom it was contributed, irrespective of the proportions in which they might have been entitled to share in profits.

Shea vs. Donohue, 15 Lea, 160.
Livingston vs. Blanchard, 130 Mass. 341.
Baker vs. Safe Deposit Co., 90 Md. 744.

Hence, this indemnification money, representing capital, should be returned to those partners by whom the capital was contributed, viz., Samuel Smith and James A. Buchanan. This would be true even if it were assumed that the plaintiffs in error were correct in their contention that the rights of the parties must be judged as if the seizures by the French had occurred after 1818, when William B. Buchanan was taken into the firm by his father.

The other side refer to James A. Buchanan's affidavit (Record, pages 87, 88) that William B. Buchanan when admitted into the firm "enjoyed a competent independent estate of his own" as evidence that he contributed such estate to the capital of the partnership; but clearly the inference is unwarranted. William B. Buchanan's "independent estate," like all the individual property of a partner was liable for the debts of the firm, but it did not become partnership property. Moreover, nothing indicates that William B. Buchanan's "independent estate" was ever actually resorted to for payment of a single dollar of the partnership debts. Indeed, the "Statement of the Affairs

of S. Smith & Buchanan" (Record, page 85), discloses that, while the firm had suspended payment and, in mercantile language, failed, yet its assets exceeded its liabilities by over eighty thousand dollars. None of the partners except the elder Buchanan went into insolvency, and William B. Buchanan's "independent estate" probably remained intact, although of course his father would not have taken him into the firm if he had believed it to be in doubtful circumstances. At all events, the younger Buchanan contributed nothing to the firm's capital.

We may add that the descendants of Samuel Smith are far from admitting that William B. Buchanan, on his admission into the firm in 1819, was given a right to participate equally with his father and Samuel Smith in the profits of the business. On the contrary, it is more than probable that Samuel Smith continued to own a one-half interest, the two Buchanans together owning the remaining one-half interest. For, when a son of a junior partner, only 23 years of age, is taken into a pre-existing firm, is it reasonable to suppose that he is to share profits equally, not merely with his father, but with the senior partner?

IX.

From the foregoing it appears that any Federal question that may have been decided below was correctly decided. But for several reasons we think that the decision below is purely a matter of local law.

1. Even if the plaintiffs in error were *strictissimi juris* entitled to all that they ask, they could not obtain it unless their claim was properly set up in accordance with the procedure of the State Courts. Now in Maryland, in Courts of Equity, the practice of the English Court of Chancery in all its essential features still prevails. Miss Esther S. Buchanan, therefore, can obtain no relief not prayed for in her bill. Against her co-plaintiff in error, Wilson C. Buchanan, the bill was taken *pro confesso* (Record, page 24), so that his rights are measured by the same standard as his sister's,

and can rise no higher than hers. As already stated in this brief, the bill did not disclose the date on which William B. Buchanan became a member of the firm or suggest in any way the facts which make the contention of the plaintiff so inequitable. This lack of frankness in the plaintiff's bill would alone be sufficient to justify a court of conscience in overruling her contentions. But further than this, her prayer is "that *this* Honorable Court"—*i. e.*, the State Court—"will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth and that it will direct and supervise the distribution of the same among the parties whom the Court"—again, the State Court—"may find to be entitled to participate therein according to the proportion and rule which this Court"—still, the State Court—"may declare to govern the same." The only other prayer is for "such other further relief, etc.,"—which at most is a prayer for general relief, and which by reason of its abbreviated form probably should not be accorded even that effect. Is it not evident that such prayers do not include the unconscionable claims set up on this writ of error? As said by the Court of Appeals: "To make the distribution in the manner now suggested by her (Miss Buchanan's) counsel on her behalf * * * *would not accord with the prayer of the bill.*" (Record, page 102.)

The decision below is, therefore, supported by this simple proposition in the law of equity procedure, that relief not prayed for cannot be granted; and consequently no Federal question was necessarily involved.

2. There can be no question—unless the authority of Blagge vs. Balch, 162 U. S. 439, were impeached—that the next of kin of the original sufferers are, under the French Spoliation Acts, the objects of the bounty of Congress.

The determination in Blagge vs. Balch, as expressed in the opinion of the Court delivered by Mr. Chief Justice Fuller, is:

"It appears to us that Congress intended that the next of kin should be the beneficiaries in every case; that the limitation is express; and that the creditors, legatees and assignees, all strangers to the blood are excluded." 162 U. S. 460.

The present Act of 1899, closely following the former Act of 1891 in other respects, makes the exclusion of creditors and assignees still more express by the added proviso.

In Blagge vs. Balch, the Court further determined by what law the next of kin are to be ascertained. The decision is expressed in the opinion in the following words:

"We are of opinion that Congress in order to reach the next of kin of the original sufferers capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the original sufferers."

162 U. S. 464.

In the present case the original sufferers were, as the evidence incontrovertibly shows, and has been adjudged by the Maryland Court of Appeals, Samuel Smith and James A. Buchanan, at the time of the seizures and condemnation copartners in business under the firm name of S. Smith & Buchanan, and domiciled in Maryland, of which State they were citizens.

These next of kin, therefore, are the persons to whom Congress intended the awarded fund to go. Otherwise than as their presumed actual representative, Miss Esther S. Buchanan had no standing in the Court of Claims when the claim was under consideration. Whatever her official character, as administrator or executor of either of those original sufferers, or other official character whatsoever, her right to represent the claim depended, not upon any such official character, but upon her being authorized by the next of kin—that is to say, those persons who by the decree of

the Maryland Court have been conclusively ascertained to be those next of kin.

Now, if under these circumstances, the person, so being really agent for the true beneficiaries, and who, in consequence thereof, has been paid the money awarded for the claim, should refuse to make distribution among those who were equitably entitled, the ground of the jurisdiction of the Court whose aid may be invoked to enforce performance of the duty is that doctrine of equity which affirms that whoever is clothed with a constructive trust arising out of the fact that he has obtained the possession of money to which the beneficiaries or *cestuis que trustent* are entitled, may be compelled to execute the trust.

Johnson vs. Towsley, 13 Wall. 85.

Here, to make the equitable case stronger, if possible, the *cestuis que trust* have not found it necessary to file a bill for the enforcement of the trust. The trustee herself has come into the Court of Equity, voluntarily submitted herself and the fund to the jurisdiction of the Court, and prayed that equity be done.

The question, therefore, naturally presents itself, was any Federal question really involved when the State Court of Equity, thus called upon to exercise a clear equity jurisdiction, did execute it? It would seem the answer should be in the negative, and that when the Maryland Court found who were the next of kin of the original sufferers and the proportions in which, according to the law of Maryland, the place of domicile, they were entitled to share, it simply acted under an ordinary head of equity jurisprudence.

Before the decision in Blagge vs. Balch authoritatively settled the construction of the Act of Congress and determined that only next of kin, and not parties claiming by assignment, are beneficially entitled, there was a real Federal question. But now there seems to be none, when the State Court has only followed and applied that decision, and for all the rest has simply exercised the ordinary jurisdiction of a Court of Equity.

3. Lastly, it should be borne in mind that, at the time of the appropriation and of the payment of the money out of the Treasury, Miss Buchanan was administratrix of James A. Buchanan as well as of William B. Buchanan. So, she filed the bill of complaint in this case in three capacities—individually, as administratrix of William B. Buchanan, and as administratrix of James A. Buchanan. If the rule of the Court of Claims, by which, where the original sufferers were partners at the time of the seizures, the administratrix of the surviving partner was recognized as, usually, the proper representative of the claim, could be deemed anything more than a mere directory rule of practice, then we submit that, Miss Buchanan filing the bill as administratrix of James A. Buchanan, the fund should be regarded by legal construction as then in her hands as such; as where a person coming into possession of chattels as executor *de son tort* subsequently becomes administrator *c. t. a.*

But in whatever character Miss Buchanan may have supposed herself to be the holder of the fund, or may by legal construction be regarded as holding it in the moment next preceding the filing of the bill, she by that act submitted it to the jurisdiction of the Court, to be distributed according to equity. What disposition could a Court of Equity possibly make of it other than that which by the opinion and decree of the Court of Appeals has been made?

For the State Court of Equity to have done otherwise would have been to act contrary to its nature, to turn itself into an instrument of wrong, to make the plaintiff the perpetrator, as agent for innocent and confiding parties, of a breach of faith, and convert the Court itself into an actor in a breach of trust. The bill, which submitted the fund to the Court's jurisdiction and asked it to make disposition of the money as it should deem equitable, presented no such contention as has been made in argument on behalf of the plaintiff. The Court assumed jurisdiction according to the

prayer of the bill, and has directed the distribution of the fund in the only manner possible to a Court of Equity.

Respectfully submitted,

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